

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 8795

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BRIEF FOR APPELLANT.

Joseph W. Stewart

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United States Court of Appeals

DISTRICT OF COLUMBIA

230

LORNA LANGAN,

Appellant,

vs.

JOHN FRANCIS LANGAN,

Appellee.

Appeal from the District Court of the United States
for the District of Columbia.

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BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT

This is an appeal from a final decree of the District Court of the United States for the District of Columbia discharging the writ of habeas corpus and granting custody of the minor child to appellee, and is prosecuted pursuant to the provisions of Title 17, Section 101, District of Columbia Code, 1940.

The District Court had jurisdiction under the provisions of Title 11, Section 315 and Title 16, Section 808, District of Columbia Code, 1940. After a hearing the District Court dismissed the petition, discharged the writ, and granted custody of the minor child to appellee (App. 6-8).

STATEMENT OF THE CASE

On August 22, 1941, the parties herein were divorced by a decree of the Superior Court of Los Angeles County, California and the custody of the minor child was awarded Lorna Langan, the mother. In disregard of the order of that Court, John Langan, the appellee herein, seized the child and disappeared with her. (App. 15). For the next two years Lorna Langan continued her search for her child and in about September, 1943, she found her living with John Langan in Montgomery County, State of Maryland. (App. 3, 12)

She immediately retained counsel and habeas corpus proceedings were instituted in the Circuit Court of Montgomery County in the State of Maryland. After a hearing of the petition a three judge Court granted the petition and awarded the custody of the child to the mother (App. 3, 12).

Once again, John Langan seized the child, this time but one day after the decree was signed.

Lorna Langan, once again, filed a petition for a writ of habeas corpus in the Court below, alleging that John Langan was detaining the child illegally and had failed to obey the decrees of the Courts of California and Maryland (App. 2). The hearing began on the 28th day of February, 1944, and was concluded on the 17th day of March, 1944, at which time the Court took the matter under advisement. On the 17th day of March, 1944, the Court issued a memorandum opinion, stating that it "would follow the ruling of the Maryland Court in the above case (there being really no change in the circumstances involving the parties) except for very unusual factors * * *" in that at the trial Lorna Langan, over objection, had testified that John Langan was not the father of the child (App. 5). The following day the lower Court signed an order discharging the writ, dismissing the peti-

tion and awarding custody of the child to the appellee (App. 7).

Considerable testimony was adduced showing that the mother was operating a school for children in California (App. 26) and that she was able to care for the child (App. 26).

STATEMENT OF POINTS

1. The Court erred in refusing to grant custody to appellant.

2. The Court erred in refusing to give full faith and credit to the decree of the Circuit Court for Montgomery County, Maryland, signed February 24, 1944.

3. The Court erred in holding that it was for the best interests and welfare of the child that she should remain in the care, custody, and control of the appellee.

4. The Court erred in refusing to grant the mother the right to see and visit with her child at reasonable times.

SUMMARY OF ARGUMENT

1. This is not a proper case for the "Change in circumstance rule" because no time elapsed between the date of the prior decree and the seizure of the child by appellee.

2. No evidence of a change in circumstances was presented to the lower Court.

3. No change in circumstances was established.

4. The evidence clearly established the fitness, ability and affection of the mother.

5. The controversy concerning the paternity of the child and the evidence introduced thereon cannot be considered a "change in circumstances" within the meaning of the rule.

6. If the lower Court is affirmed, the mother should be permitted reasonable visitation.

ARGUMENT

In the Opinion written by Justice Goldsborough in this case, dated March 17, 1944, the specific finding is made that the "Court would follow the ruling of the Maryland Court in the above case (*there being really no change in the circumstances involving the parties*) except for very unusual factors appearing in the case here which were not at issue at the Maryland hearing * * *" (parenthesis, the Court's, italics added). It is our contention that having found no change in circumstances, the lower Court erred in going into other "factors appearing in the case here which were not at issue at the Maryland hearing."

The "other factors" are the admission made by Lorna Langan, over objection, and upon the insistence of the lower Court, that John Langan was not the father of the child involved and that appellee and appellant were not married until some five years after the child was born. This the lower Court refused to believe, although in the opinion mentioned, it stated: "The Court also recognizes that the conduct of the respondent in living with the petitioner, as he did, in the absence of a marriage, is entirely reprehensible * * *" It is our contention that the so-called "other factors" serve to show no change in the circumstances involving the parties; moreover, it certainly is not a circumstance which arose since the Maryland decree.

The positive evidence shows that the mother is earning some \$500.00 per month and is employed in the operation of a school for children in California. On the other hand, the record shows that the appellee has violated the orders of the Courts of California and Maryland granting custody of the child to the mother in each instance. It is our con-

tention that upon the only evidence properly before the Court, the custody of the child should have been given to the mother.

**The "Change In Circumstance Rule" Is Not Applicable
In This Case, Because**

A. No time elapsed between the signing of the decree in Maryland and the taking of the child in the District of Columbia.

B. No change in circumstances was established.

On February 24, 1944, at one o'clock A. M. the Maryland Court signed the decree awarding custody of the child to appellant and the child was forthwith turned over to her. (App. 34). At about nine o'clock A. M. the same morning appellee seized the child in Washington (App. 35), and immediately thereafter secreted her until the writ of habeas corpus, which is the subject matter of this case, was served upon him.

The principle established by the authorities is to the effect that when an award of custody is made by a court of competent jurisdiction, such award is final and conclusive as to all matters involved, and comes within the full faith and credit clause of the Constitution.

Rosenberger v. Rosenberger

68 App. D. C. 220, 95 F. 2d 349

Church v. Church

50 App. D. C. 237, 270 Fed. 359

A corollary of this rule is that such a decree is not to be disturbed except upon convincing proof of changed circumstances and conditions arising subsequent to the latest decree of the sister state, and these conditions must be of a substantial nature affecting adversely the interests and welfare of the children and calling for emergency action by the court of the forum.

The changed circumstances which the Court considers are those which have come into existence since the date of the prior foreign decree, and they must be of a "substantial, not shadowy character, (*Heavrin v. Spicer*, 49 App. D. C. 337, 265 F. 977) involving the fitness of the custodian or otherwise threatening an immediate danger to the life, health, morals or welfare of the children and calling for emergency action by the courts of the District" *Rosenberger v. Rosenberger*, *supra*.

To do otherwise would encourage repeated litigation over the custody of children and would cause repeated trials of the same charges and counter-charges. As this Court stated in the case of *Cook v. Cook*, 77 U. S. App. D. C. 388, 135 F (2d) 945

"Where the circumstances are the same as existed at the time for the former decree, the evidential effect of that decree may according to the *Boone* case be given 'the effect of res judicata'. This is a common sense rule to avoid a retrial of the same issues and charges which were tried in the former proceedings."

This is the law in this jurisdiction as confirmed recently in *Boone v. Boone*, 76 U. S. App. D. C. 399, 132 F. (2d) 14, and *Cook v. Cook*, *supra*.

"This court has recently said that '* * * when the matter of custody has been adjudicated by the court of another jurisdiction, it is necessary—in order to warrant the taking of jurisdiction by the courts of the District—that the circumstances which existed at the time of such adjudication should have changed.' We take this to mean—in order to warrant the courts of the District in changing the custody previously adjudicated, the circumstances which existed at the time of such adjudication should have changed. We think, therefore, that the District Court was right in holding itself bound, with respect to conditions at the date of the North Carolina court's order, by that court's findings. This is simply to say that we should not needless-

ly thresh over old straw, but should apply the doctrine of *res judicata* as far as the nature of the case permits. Having found appellee's conduct since the date of the North Carolina order to be exemplary, the District Court declined to go into old charges which appellant had brought against appellee in the North Carolina court and which that court had determined to be untrue. We think this was correct and salutary."

Boone v. Boone, supra

The circumstances which this Court considered sufficient in the *Cook* case, *supra*, to require the trial court to exercise its independent judgment for the welfare of the child are an indication of the true meaning of the rule. In that case, (1) the children lived with their mother for two years after the last decree, (2) the children were established in a school in the District of Columbia, and (3) the children had no desire to return to Buffalo.

In the present case, the child was seized the day of the last decree (App. 2-3). Moreover, the appellee was a resident of Maryland and the child was established in a Maryland school; the appellee is now maintaining his home in the District of Columbia and cannot return to Maryland because he is in contempt of the order of that Court. The issue of school for the child was before the Maryland Court as was the expression of the desire of the child to remain with appellee (App. 12). Hence, it cannot be said in this case that "none of these circumstances were before the * * * (foreign) court when it entered its order. * * *."

Cook v. Cook, supra

No change in the ability of the mother to care and provide for her child was established but on the contrary the evidence established that she conducted a school for children in California and was earning approximately \$500.00 a month (App. 26). The opinion of the Maryland Court is particularly pertinent here because that Court determined

the issue of the fitness of the mother the day the child was seized. (App. 12).

The lower Court concluded that a new circumstance arose after the Maryland decree in that at the trial appellant denied the paternity of the child. The Court stated that it is apparent that "she is willing to stigmatize her child as illegitimate in the attempt * * * to prevail in this controversy. The Court cannot take the responsibility of turning the custody of the child over to one whose mental operations appear so insecure." The issue therefore is whether this line of testimony given by the appellant warrants the conclusion that there was a change of circumstances since the Maryland decree. The reasoning of the lower court is clearly erroneous because the Court says that appellant is willing to stigmatize the child as illegitimate in order to prevail, yet an examination of the record will disclose that appellant refused to testify as to the paternity of the child and did so only after the objection of her counsel was overruled and the Court directed her to testify (App. 27). This same reluctance to testify is evidenced throughout the record (App. 27-29). It is apparent from the opinion of the lower Court that if appellant in response to the question of whether appellee was the father of the child, had answered in the affirmative, custody of the child would have been granted to her. It is apparent that the mother had no intention of denying the paternity of the child and faced with the specific question, refused to answer until ordered by the Court to do so (App. 27-29). How can it be said, therefore, that she is willing to stigmatize her child in order to prevail in this controversy?

It should be noted that nothing in the prior history of the litigation of this controversy would suggest to the appellant that she would not prevail in her fight for custody of her child since the courts of California and of Maryland after a full hearing in each instance had granted custody to her. It is therefore not reasonable to assume, as did the

lower Court, that she was willing to stigmatize her child. She was in the midst of a bitter fight for her child; she had every reason to believe that she would again prevail; her ultimate goal and expectation was to retain her child and to live with her and be responsible for her upbringing. Can it be said that with such a contemplation of the future she would characterize this child as illegitimate? It is respectfully submitted therefore, that the testimony given was given with no possible hope for advantage either to the child or to herself.

CONCLUSION

The "Change in Circumstance Rule" is not applicable to this case in that no time elapsed between the determination by a court of competent jurisdiction that the mother was the proper custodian of the child and the seizure of the child by the appellee. Moreover, no new circumstance was proven.

Respectfully submitted

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No. 8795

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United States Court of Appeals

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UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

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BRIEF FOR APPELLEE

OPINION BELOW

The opinion of the District Court of the United States for the District of Columbia (App. 5-7)¹ is not yet reported.

JURISDICTION

The order of the District Court of the United States for the District of Columbia was entered on March 22, 1944. The jurisdiction of the District Court rested on Title 11, Section 315, and Title 16, Section 808, of the District of Columbia Code, 1940. The jurisdiction of this Court is invoked pursuant to Title 17, Section 101, District of Columbia Code, 1940.

¹References herein are as follows: "App." refers to the Joint Appendix; "R." refers to the unprinted record below, which has been certified to this Court.

COUNTER-STATEMENT OF THE CASE

This is an appeal from a final order (App. 7) of the District Court of the United States for the District of Columbia entered March 22, 1944, discharging a writ of habeas corpus and granting custody of a minor child to appellee. In support of the petition for habeas corpus (App. 2), the appellant, Lorna Langan, had relied upon a decree (App. 12-14) of the Circuit Court of Montgomery County, State of Maryland, entered February 24, 1944, awarding to her the custody of the child. Shortly after the Maryland decree, while Lorna Langan was in the District of Columbia accompanied by the child, the appellee, John Langan, took the child into his custody, in the absence and without the consent of Lorna Langan. Thereupon Lorna Langan instituted this action to regain custody of the child. Following an extensive hearing of more than two weeks, resulting in a record of over 1,000 pages, the District Court entered findings of fact and conclusions of law, and awarded custody of the child to John Langan.

From the findings of the District Court (App. 8-11) the following facts appear:

Joan Langan is the eleven-year-old daughter of Lorna Langan and John Francis Langan. Although Joan was born in 1933, her parents were not validly married until July 23, 1938, having lived together prior thereto as man and wife (App. 8). On August 10, 1938, Lorna Langan instituted divorce proceedings against her husband, John Langan, in the Superior Court for Los Angeles County, California (App. 8-9). However, upon cross-complaint by John Langan, the decree of divorce was awarded to him, in 1939, and the child was made "a ward of the Court" [and was placed in a neutral home] (App. 9). Two years later (1941), John Langan, in order to terminate the child's living in orphanages, consented that Lorna Langan take custody of the child (App. 9). In the period since the entry of the consent order of custody, the conditions sur-

rounding the parties have materially changed (App. 9). John Langan, who has remarried and has a baby boy (eight months of age at the time of the hearing), is now living a normal and ordinary life with his present wife, who is industrious, capable, and honest (App. 9). She is devoted to Joan Langan and is a proper person to aid her husband in rearing the child (App. 9). John Langan occupies a responsible position of trust in the United States Government and is a proper person to whom to award the custody of Joan Langan (App. 9). At the time of the filing of the petition and at the time of the trial he was domiciled in the District of Columbia and intends to remain here (App. 11).

Lorna Langan is not a proper person to have custody of the child (App. 10). She is irresponsible as to her statements and her mental processes are insecure (App. 10). At the trial she perjured herself repeatedly (App. 10), fabricated a tale that the child's father was not John Langan but was one "John L. Manners" (found by the Court to be a fictitious character), and contradicted herself as to whether she was married and as to whom she had married (App. 10). She is a subject of Great Britain and at present is subject to deportation (App. 9).

Joan Langan is a very intelligent child and fully capable of expressing her preferences (App. 10). She loves her step-mother and prefers to be in her father's custody. She does not desire to be with her mother, Lorna Langan (App. 10).

ARGUMENT

The special nature of a custody proceeding has often been recognized by this court. The welfare of the child is paramount; the considerations ordinarily applicable to adversary litigation do not apply. *Cook v. Cook*, 77 U. S. App. D. C. 388, 135 F. (2d) 945; *Rosenberger v. Rosenberger*, 68 U. S. App. D. C. 220, 95 F. (2d) 349. It was

in this context that the District Court, while giving full consideration to the Maryland decree, felt impelled to deny custody of the child to Lorna Langan. We shall endeavor to show that (1) the evidence below overwhelmingly establishes that the child's welfare requires the retention of her custody by John Langan; and that (2) the District Court gave sufficient recognition to the Maryland decree.

I

THE EVIDENCE BELOW OVERWHELMINGLY ESTABLISHES THAT THE DISTRICT COURT COULD NOT IN GOOD CONSCIENCE HAVE AWARDED CUSTODY OF THE CHILD TO LORNA LANGAN.

We believe that proper disposition of this case requires a reading of the complete record below, since the case involves human relationships, complex problems of personality, and subtle factors of adjustment, which may be obscured in paraphrase or in excerpts of the testimony. Nevertheless we shall endeavor to present in summary form the factual setting in which the court below was asked to exercise its judgment. The dominant elements to be considered are (a) the fitness of the mother; (b) the child's present home life with the father; and (c) the desires of the child.

(a) The fitness of the mother

The District Court found that Lorna Langan "is irresponsible as to her statements" and that "her mental processes are insecure" (App. 10). The court found that Lorna Langan perjured herself on numerous occasions and that she was willing to go to the shocking length of bastardizing her child by fabricating a story that the father of the child was not John Langan but was one "John L. Manners," a fictitious person created by her for the purpose of this case (App. 10). The nature of Lorna Langan's

testimony in this regard (R. 111-134) fully supports the court's findings and the conclusions it drew. Wholly apart from the fact that Lorna Langan was willing to subject her child to the stigma of illegitimacy,² and apart from the fact that she proved herself to be a persistent perjurer, what is significant is that she believed that she could foist upon the court her fantastic tale of a mythical "John L. Manners." A careful reading of the manner in which she presented her story (R. 111-134) gives convincing proof that the court below was correct in finding that her "mental processes are insecure."

The "Manners" creation was merely one in a series of glaring inconsistencies, contradictions, and exaggerations which no person of reasonable judgment and stability could have seriously advanced for the consideration of a court. For example, she asserted that she had never filed a divorce suit in California (R. 211), but shortly thereafter admitted that she had filed such a suit (R. 213, 215-16). She testified that she told "Manners" Joan was his child (R. 127), later that she didn't remember whether she had told him (R. 129), and finally that she didn't think she had told him (R. 129). She testified at one point that she did not enter the country illegally (R. 116), but later inadvertently admitted that "she was in the country illegally" (R. 131); she stated that she had been "tricked" into marrying John Langan (R. 182), but later asserted that she had married John Langan because he was claiming the child (R. 202). In her desperate effort to support the existence of a "John L. Manners," she produced a picture of a man with the name "J. Manners" printed below it but with the first name obviously torn off (Pet. Ex. 13; see

²Appellant's brief (p. 8) protests the statement by the District Court (App. 6) that Lorna Langan was "willing to stigmatize her child as illegitimate in the attempt * * * to prevail in this controversy" and asserts that her testimony of illegitimacy was not presented until she was required to answer questions relating to the child's paternity. But this ignores the point made by the court below: that the claim of illegitimacy was untrue. Surely Lorna Langan was under no compulsion to testify falsely, much less to do so at the expense of the child.

App. 34).³ Despite her extensive testimony concerning the mythical "John L. Manners," the only purpose of which was to demonstrate that he and not John Langan was the child's father, she later testified that "At no time in any court room, public or private, have I ever said that Mr. Manners was her [Joan Langan's] father" (R. 283). It is no surprise that Lorna Langan was once held in contempt of court for having paraded in public with a sandwich sign upon which she had written charges attacking her husband, John Langan (R. 289-90; Resp. Ex. 1, 4).⁴

Entirely apart from the insecurity of Lorna Langan's mental processes, it should be noted that Lorna Langan is a subject of Great Britain, is in this country illegally, and at the present time is subject to deportation (App. 9, 29; R. 131). It would appear questionable whether the District Court should award the custody of the child to a person who might thereafter compel the child to depart from its native land and face a complete readjustment in a foreign country.

In view of the foregoing evidence, the conclusion is irresistible that the court below properly decided it could not "take the responsibility of turning the custody of the child over to one whose mental operations appear so insecure" (App. 6).

(b) The child's present home life with the father

The court below found that John Langan has remarried and is living a normal and ordinary life with his new wife and their infant son; that John Langan's present wife is "industrious, capable, and honest, and is devoted to" Joan

³There appears to be an error in the Joint Appendix (App. 31), for, as the record will show (R. 1024), it was Lorna Langan and not Albert R. Archibald, an employee of the Department of Justice, who produced the picture.

⁴We refrain from setting forth here the lurid personal charges made by Lorna Langan against her husband (R. 106, 107, 108; compare R. 558, 594).

Langan, and that she is a proper person to aid John Langan in rearing Joan (App. 9). The evidence to support these findings is clear and convincing. Mrs. Fennell, an experienced probation officer for the Juvenile Court of Rockville, Maryland, testified that she had investigated the character of the Langan home and "found a very happy home" (R. 616). She further testified that Joan calls John Langan's present wife "Mommie," and that Joan loves her "very dearly" (R. 629, 632). Characterizing Joan as "a normal eleven-year-old child," Mrs. Fennell stated, "I think that Joan is the type of little girl she is because she has enjoyed a mother's love for the last two years." (R. 625, 631). The same picture emerged from the testimony of two other disinterested witnesses, both trained in child treatment and psychology. Mrs. Anna Rose, Principal of the Chevy Chase Elementary School which Joan attended, after testifying that it is routine in her school to trace the emotional adjustment of all children registered there, stated: "When she came to us we noticed evidences of great tension and insecurity. It was evidenced in many ways—her desire to cling to a teacher * * * she was suspicious of any criticism * * * she was easily excited. She had quite a temper and a short span of attention, and did not care to mix much with other children. She has improved greatly in all these respects. She has gained more self-control, more poise, and in general is a much better adjusted individual, I would say, than when she came to us." (R. 639-640).

Dr. Margaret Nicholson, a practicing physician and specialist in child psychology, who had attended Joan professionally and had many opportunities to observe the actions of both Joan and her step-mother toward each other, testified in precisely the same vein. When asked whether Joan had improved or had not improved from the first time she saw Joan, Dr. Nicholson replied: "Well, of course, the child was a little bit upset when I first saw the

child, psychologically. She had a more normal life after the baby was born, and she is—I think she is—very well adjusted. I think she is a very happy normal child. I think she has improved a great deal.” (R. 661). Dr. Nicholson also testified that Mrs. Florence Langan, John Langan’s present wife, is an “unusually good mother” to Joan and “is training the child beautifully” (R. 662).

(c) The desires of the child

It is perfectly clear with whom Joan Langan wishes to live. The evidence is overwhelming in support of the District Court’s finding that Joan, as a “very intelligent” child “fully capable of expressing her preferences,” prefers to be in her father’s custody, “loves and cherishes” her step-mother, and “does not desire to be with her mother” (App. 10). This finding is nowhere challenged by appellant, and indeed it could not be in view of Joan’s own testimony (R. 952-1003), which need not be detailed here. Corroborating evidence was supplied by a number of disinterested witnesses. For example, Mrs. Fennell, the experienced probation officer for the Juvenile Court of Rockville, Maryland, testified that: “I think that Joan knows exactly what she wants and she is very well able to express what she wants. I don’t think that anybody can influence Joan * * * no one can say to Joan, ‘You must like this person, or you must like another person.’ Joan forms her own opinions, and she follows a given line of reasoning. She is a normal eleven-year-old child” (R. 625). In expressing what she wanted, Joan told Mrs. Fennell “* * * I don’t ever want to go back to Lorna.” Again, in explaining why she had refused to accept gifts from Lorna Langan, Joan had told Mrs. Fennell “All I can say is that if I take it I will think of Lorna, and I don’t want to think of Lorna, and I don’t ever want to go back to Lorna.” (R. 619). And Dr. Nicholson, the child psychologist who had attended Joan professionally, testified that Joan was

quite fond of her step-mother and is unusually attached to her step-brother (R. 660-61).

Since the evidence overwhelmingly establishes the unfitness of the mother, the wholesomeness of the child's present home life with the father, and the child's strong desire to remain with the father, the court below was required in good conscience to award custody of the child to the father.

II

THE DISTRICT COURT WAS NOT BOUND BY THE MARYLAND DECREE

As noted above (p. 2), immediately prior to the institution of this proceeding the Circuit Court of Montgomery County, Maryland, had handed down a decree (App. 12-15) awarding custody of the child to Lorna Langan. The court below gave recognition to the Maryland decree but held (App. 5) that it was not precluded by the decree from awarding custody to the father, John Langan. The appellant contends, however, that by going into all the factors bearing on the welfare of the child, the District Court failed to give sufficient effect to the Maryland decree. The appellant urges that, in the absence of a "change of circumstances" since the Maryland decree, the full faith and credit clause required automatic adherence to the decree of the Maryland Court, and appellant argues that there was no such "change of circumstances." It is our position that (a) there was a sufficient "change of circumstances" within the meaning of that doctrine in custody cases, and (b) without regard to whether there was an adequate "change of circumstances," the District Court in this case was required to explore all the factors bearing upon the present welfare of the child, since the Maryland proceeding did not inquire into that issue.

(a) There was a sufficient "change of circumstances" to warrant the award of custody to John Langan.

As the appellant recognizes (Br. 5), the rule is well settled that an award of custody may, in full conformity with the full faith and credit clause, be altered by a subsequent decree in a different jurisdiction, where there has been a change of circumstances affecting the interests and welfare of the child. *Rosenberger v. Rosenberger*, 68 U. S. App. D. C. 220, 95 F. (2d) 349. In this context, the point here at issue is whether the facts in this case present a sufficient "change of circumstances."

The appellant has interpreted the "change of circumstances" rule essentially in terms of lapse of time, and points to the fact that only a short time elapsed between the Maryland decree and the decree of the court below. We submit, however, that the rule is not confined to the factor of time, but may be invoked solely upon the character and degree of the change in circumstances, whenever disclosed. For example, a sudden physical disability occurring to the custodian-parent would certainly justify a reappraisal of the fitness of the custodian. So here, where (as found by the District Court) the performance of Lorna Langan at the trial revealed her to be a person whose mental processes were insecure, a new circumstance was presented warranting a fresh examination of the custodial question.

We have already set forth in some detail (*supra*, pp. 4-6) the startling conduct of Lorna Langan at the trial. Her contradictions, fabrications, inconsistencies, and lurid charges fully justified the lower court in refusing to "take the responsibility of turning the custody of the child over to one whose mental operations appear so insecure." (App. 6)

Obviously no woman of responsibility would have attempted to bastardize her child, as did Lorna Langan,

in an effort to regain custody. Appellant argues (Br. 8) that since Lorna Langan testified as to the paternity of the child "only after the objection of her counsel was overruled and the Court directed her to testify," she was in effect compelled to bastardize her child. This argument is patently unsound. Lorna Langan was under no compulsion to testify *falsely*, but she chose to do so, *at whatever cost to the child*. The court below squarely found that John Langan was the father of the child, and that "John L. Manners," the putative father, was a mythical character. No other conclusion could reasonably be drawn from the record (R. 111-134). Having found the conduct of Lorna Langan in the period subsequent to the Maryland decree to have been so disgraceful, the District Court was free to reexamine the issue of custody.⁵

(b) The District Court properly inquired into all the factors bearing on the present welfare of the child.

Without regard to whether there was a sufficient "change of circumstances," the District Court's award of custody to John Langan was proper. Its action was based upon a full inquiry into all questions bearing upon the *present* welfare of the child. The appellant contends, however, that the District Court erred in considering any events other than those occurring between the Maryland decree and the decree of the court below. But this argument oversimplifies the case. It ignores the fact that there is a prior decree in the case—the California consent decree of August 22, 1941. Between that decree and the decree of the Maryland court, over two and one-half years elapsed. Despite this passage of time, the Maryland court did not inquire into the welfare of the child. A careful reading of the

⁵*Boone v. Boone*, 76 U. S. App. D. C. 399, 132 F (2d) 14, upon which appellant relies (Br. 6-7), is not an authority to the contrary. In that case, where this Court sustained the refusal of the trial court to alter the custodial decree of another jurisdiction, there was an express finding that the conduct of the custodian had been "exemplary" since the date of the prior decree.

Maryland court's opinion (App. 12-14) discloses that the court considered itself bound by a rule similar to that applied by the *trial* court in *Cook v. Cook*, 77 U. S. App. D. C. 388, 135 F. (2d) 945—it began with the premise that the mother was a fit custodian, and merely sought to determine whether there was sufficient adverse evidence to render her unfit. Thus it made merely a mechanical application of the "change of circumstances" rule, ignoring the wishes of the child and the fact that the child had become happily adjusted to a new environment.

It was this restricted view of the trial court's function in a custody case involving an earlier decree of another jurisdiction, which this Court rejected in *Cook v. Cook*, *supra*. The *Cook* case is an admonition that the doctrine of "change of circumstances" is not to be mechanically applied. It teaches that after a substantial lapse of time the District Court, having jurisdiction of the parties, may reconsider what the child's welfare *now* requires—even though no marked or spectacular "change of circumstances" has occurred. This doctrine is relevant here in appraising the Maryland decree, so as to determine what issues were decided by that decree and what effect is to be given its ultimate finding. The Maryland court did not purport to consider the broad issue of the welfare of the child. On the strength of a two-and-a-half year old *consent* order, it limited the proceeding to the issue of whether Lorna Langan was unfit. It excluded testimony tending to show the same gradual change of circumstances which this Court in the *Cook* case indicated might have been strong enough to justify a change in custody.⁶

As this Court said in the *Cook* case (77 U. S. App. D. C. at p. 390; 135 F. (2d) at p. 947):

⁶Witnesses Fennell (the probation officer), Rose (the school principal), and Nicholson (the pediatrician and child psychologist), whose testimony is summarized above (pp. 7-8), were not permitted to give such testimony in the Maryland proceeding (R. 628, 652, 682).

“But the doctrine of *res judicata* cannot settle the question of a child’s welfare for all time to come; it cannot prevent a court at a subsequent time from determining what is best for the children at that time * * * The children’s happiness, their psychological adjustment, their own wishes are as much entitled to consideration as changes in material environment. As was said in *Boone v. Boone*, the trial court should constantly keep in mind the ultimate question, which is ‘whether the welfare of the children now requires a change in the custody previously provided by the court of their domicile’.”

It is therefore apparent that the District Court properly considered all circumstances bearing on the welfare of the child. Had it accepted the appellant’s thesis, the appellant would have succeeded in foreclosing the issue of the present welfare of the child by a decree which did not purport to determine that issue. The consideration of the broader issue by the District Court in this case does not involve, therefore, the substitution of its judgment for that of the Maryland court, nor does it involve a reconsideration of issues decided by that court. The District Court, in protecting the interests of this community in the welfare of the child, was required to give the Maryland decree no broader scope than the Maryland court assumed.

Appellee recognizes that the decision of custody cases involving the decrees of other jurisdictions presents a difficult practical problem of judicial administration. The court necessarily must protect itself from becoming a haven for disappointed litigants. But at the same time it must make such disposition of custody as is required by the present welfare of the child. Certainly there is no doubt what the present welfare of the child requires. And we believe that the peculiar facts of this case cannot serve to foster a “run” on the Court for new custody decrees. This is not a case in which a disappointed litigant took the child into another jurisdiction in an attempt to secure retrial of

the issues. John Langan did not bring the child into this jurisdiction; the child was already here and had become the interest of this community.

CONCLUSION

Joan Langan is now living in a happy and stable home with a devoted father, his present wife, and a baby brother, to all of whom she is deeply attached. As a member of this family for over two and one-half years at the time of the trial (now almost three and one-half years) she has enjoyed a normal home life and has discarded evidences of maladjustment carried over from her past unsettled way of life. Purely on the strength of a Maryland decree which ignored the broad question of the general welfare of the child, the appellant asks this court to uproot the child from a proved environment and subject her to a speculative future with a person who is unfit and is subject to deportation. Both authority and good conscience require that the appellant's request be denied and the judgment of the court below be affirmed.

Respectfully submitted,

JOSEPH B. GOLDMAN,
1445 Ogden St., N. W.,
Washington, D. C.
Attorney for Appellee.

January 1945

No. 8795

JOINT APPENDIX TO BRIEFS

United States Court of Appeals

DISTRICT OF COLUMBIA.

LORNA LANGAN,

Appellant,

v.

JOHN FRANCIS LANGAN,

Appellee.

Appeal from the District Court of the United States
for the District of Columbia.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED DEC 11 1944

Joseph W. Stewart

CLERK

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United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8795

LORNA LANGAN,

Appellant,

v.

JOHN FRANCIS LANGAN,

Appellee.

**Appeal from the District Court of the United States
for the District of Columbia.**

JOINT APPENDIX TO BRIEFS

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA**

LORNA LANGAN
Lord Calvert Hotel
College Park, Maryland
Petitioner,

vs.

JOHN FRANCIS LANGAN,
Office of Strategic Services,
War Department,
Washington, D. C.
Defendant.

Filed February 26, 1944. Charles E. Stewart, Clerk.
Habeas Corpus No. 2614

PETITION FOR WRIT OF HABEAS CORPUS

Your petitioner, LORNA LANGAN, respectfully represents unto the Court as follows:

- (1) THAT she is a resident of the State of California.
- (2) THAT she is the mother of the minor child, JOAN LANGAN aged ten years;
- (3) THAT the said JOAN LANGAN, a minor child, is being unlawfully detained in the District of Columbia by the said JOHN FRANCIS LANGAN;
- (4) THAT on, to-wit, the 24th day of November, 1943, your petitioner filed a petition for writ of habeas corpus in the Circuit Court for Montgomery County, Maryland alleging that said minor child was being unlawfully detained by the said JOHN FRANCIS LANGAN in that jurisdiction;
- (5) THAT on, to-wit, February 24, 1944, after a full hearing of said cause, the Circuit Court for Montgomery County, Maryland, ordered that the custody of the said JOAN LANGAN be remanded to your petitioner;
- (6) THAT thereafter, on, to-wit, February 25, 1944, the said JOHN FRANCIS LANGAN unlawfully seized and carried away the said JOAN LANGAN, minor child of your petitioner and is now concealing her from your petitioner;
- (7) THAT upon the facts stated above, your petitioner says that her infant daughter, JOAN LANGAN, is being unlawfully detained by the said JOHN FRANCIS LANGAN.

WHEREFORE, to obtain the release of the said infant from the defendant's unlawful detention, this petitioner prays:

(1) THAT a writ of habeas corpus may issue directed to the defendant to the end that the said infant child, JOAN LANGAN may be brought forthwith before this Court for the purpose of determining the issues involved herein;

(2) THAT the infant be released in the custody of your petitioner, pending trial in accordance with the Code of Laws for the District of Columbia;

(3) AND FOR such other and further relief as the nature of this case may require and to this Court may seem honorable and just.

LORNA LANGAN,
Petitioner.

WALTER L. GREEN,
WILLIAM J. MILLER, JR.,
WILLIAM R. LICHTENBERG,
Attorneys for Petitioner,
National Press Building,
Washington, D. C.

4 **ORDER OF THE COURT**

The above entitled cause having been presented upon the verified petition of LORNA LANGAN and upon statement of counsel and whereas it appears that the said LORNA LANGAN is the natural mother of the infant child, JOAN LANGAN mentioned in the said petition, and whereas it further appears that on, to-wit, the 24th day of February, 1944, the custody of the said infant child was remanded to the said LORNA LANGAN by the Circuit Court for Montgomery County, Maryland, and whereas, it further appears that the said infant child may be removed from the jurisdiction of this Court prior to a hearing on this petition.

NOW THEREFORE, be and it is ORDERED this 26th day of February, 1944, that the writ of habeas corpus

issue in this case and that the same be made returnable forthwith, and it is further

ORDERED that the Clerk insert a clause in said writ commanding the Marshal to serve the same upon the said JOHN FRANCIS LANGAN and cause him to appear immediately before the Court together with the said infant child, JOAN LANGAN.

MATTHEW F. McGUIRE,
Judge.

7 HABEAS CORPUS

B24721

UNITED STATES DISTRICT COURT

Civil Division, District of District

Habeas Corpus No. 2614

THE PRESIDENT OF THE UNITED STATES OF
AMERICA

To John Francis Langan, Office of Strategic Services,
War Department, Washington, D. C.—*GREETING*:

YOU ARE HEREBY COMMANDED, that the body of Joan Langan by you restrained of her liberty, as it is said detained by whatsoever names the said Joan Langan may be detained, together with the day and cause of her being taken and detained, you have before the Honorable T. Alan Goldsborough, Judge of the United States District Court in and for the District of Columbia at the court room of said Court, in the City of Washington, forthwith, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

WITNESS the Honorable T. Alan Goldsborough
United States District Judge at Washington
this twenty-eighth day of February, A. D. 1944.

CHARLES E. STEWART,
Clerk.

By Barbara Kendall
Deputy Clerk.

UNITED STATES MARSHAL'S RETURN

.....DISTRICT OF Columbia, ss:

Received the within writ the 28th day of Feb., 1944, and
executed same. by serving John Francis Langan personally
this 28th day of Feb. 1944.

JOHN B. COLPOYS
U. S. Marshal.

By C. M. KEARNEY,
Chief Deputy Marshal.

15

OPINION

Filed Mar. 17, 1944 Charles E. Stewart, Clerk

While the full faith and credit clause of the Constitution rests more lightly upon custodial cases than elsewhere, this Court would follow the ruling of the Maryland Court in the above case (there being really no change in the circumstances involving the parties) except for very unusual factors appearing in the case here which were not at issue at the Maryland hearing—so unusual, in fact, that the Court feels its ruling does not constitute a precedent of disregard of the full faith and credit clause.

As did not appear in Maryland, the petitioner in this Court claims that a man by the name of John L. Manners was responsible for two pregnancies, the second of which resulted in the birth of the child in question, Joan Langan,

the petitioner further claiming that at no time did she have any sexual relationship with the respondent. The testimony involving the alleged John L. Manners is, in the opinion of the Court, too vague, indefinite and removed from probability to justify the Court's serious consideration. The Court is also of the opinion that for the respondent to have taken the interest in the child, Joan Langan, which all the testimony shows that he has taken for so many years, unless he had reason to believe the child was his, is entirely contrary to human experience.

16 Two considerations are outstanding. The petitioner, apparently without any reason except an attempt to secure a favorable decision in this cause, first takes the position that a John L. Manners, to whom she does not claim to have been married, is the father of the child, and then, fearing that the weight of the evidence would be against this contention, claims that the marriage to the respondent (to the validity of which she had previously testified), was in fact invalid as a marriage. The only reasonable conclusion apparent to the Court is that she is willing to stigmatize her child as illegitimate in the attempt, as indicated above, to prevail in this controversy. The Court can not take the responsibility of turning the custody of the child over to one whose mental operations appear so insecure.

The Court recognizes the inconsistencies in the testimony of both petitioner and respondent. The Court also recognizes that the conduct of the respondent in living with the petitioner, as he did, in the absence of a marriage is entirely reprehensible, but it appears that the respondent is now living a normal and ordinary life and that his wife, the child's step-mother, is not only devoted to the child, but is apparently interested only in the career of an American mother, which the Court regards, when circumstances permit, as the highest calling of an American woman.

The Court will sign an order awarding custody of the child, Joan Langan, to the respondent.

T. ALLAN GOLDSBOROUGH,
Justice.

18

ORDER

Filed March 22, 1944

Upon consideration of the Petition for Writ of Habeas Corpus filed herein for custody of an infant child, Joan Langan, and the return filed thereto, and after a hearing and trial had in open Court, it is by the Court this 22nd day of March, 1944,

ORDERED that the custody of the child, Joan Langan, be awarded to the respondent, John Francis Langan and the Petition dismissed and the Writ discharged.

T. ALLAN GOLDSBOROUGH
Justice

March 17, 1944

19 **ORDER OVERRULING MOTION FOR ORDER
TO PERMIT MOTHER OF JOAN LANGAN TO
HAVE REASONABLE VISITATION.**

Upon consideration of the motion for order to permit mother of Joan Langan to have reasonable visitation, it is, by the Court, this 22nd day of March, 1944.

ORDERED, that the motion for order to permit mother of Joan Langan to have reasonable visitation is hereby overruled.

T. ALLAN GOLDSBOROUGH,
Justice.

21 Upon consideration of the motion for order that the petitioner, Lorna Langan, have her daughter, Joan Langan, with her at reasonable times, it is, this 24th day of March, 1944,

ORDERED THAT the motion for order to permit the petitioner to have her daughter, Joan Langan, with her from time to time is hereby over-ruled solely because it is necessary for the Court to protect its order of award of the custody of the child to the respondent, John Langan, her father.

The order submitted to the Court by the petitioner on March 22, 1944 and signed by the Court on that date entitled "Order Overruling Motion for Order to Permit Mother of Joan Langan to Have Reasonable Visitation" is hereby recinded.

T. ALLAN GOLDSBOROUGH,
Justice.

23 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Findings of Fact

1. A female child (Joan Langan) was born of the marriage of petitioner, Lorna Langan, and respondent, John Francis Langan, on March 14, 1933 and that Joan Langan is the daughter of petitioner and respondent.

2. That said respondent and petitioner lived together as man and wife prior to July 23, 1938, but at that time and on that date, the said parties went through a ceremonial marriage in Glendale, California; that the marriage was a valid proper and legal marriage and constituted petitioner and respondent husband and wife.

3. That on August 10, 1938, the petitioner instituted divorce proceedings against the respondent and said respondent, on the 29th day of September, 1938, filed a cross-

complaint, claiming an absolute divorce from petitioner; that said cause came on for hearing and the California Court (Superior Court for Los Angeles County) entered a decree of divorce in favor of respondent, John Langan, against petitioner, Lorna Langan.

4. The California Court made said child a "ward of the Court" at the expense of respondent. Two years later, in 1941, the respondent consented that the child be put in the custody of said petitioner, in order to terminate the child's living in orphanages; that the petitioner is a subject of Great Britain and, at the present time, is subject to deportation.

5. That the conditions surrounding the parties herein involved have materially changed since the entry of said consent order of custody; that said changes are as follows:

24 Respondent has remarried and he and his present wife are living a normal and ordinary life and said respondent and his present wife are the parents of a baby boy who is eight months old; that the Court finds that his present wife is able, industrious, capable and honest and is devoted to her child and the minor child of the prior marriage of respondent and is a proper person to aid respondent in caring for her and raising said minor child.

6. That respondent occupies a responsible position of trust in the United States Government and is a proper person to whom to award the custody of said child.

7. That petitioner is not a proper party to whom to award custody of said child. She claimed, during the trial, that one, John L. Manners, was the father of this child and that the child was illegitimate and born out of wedlock. This charge and claim the Court finds is false.

8. The petitioner also originally claimed a bona fide marriage with respondent and it was under this marriage that she had filed her original suit for divorce and it was

under this marriage that she had obtained the consent custody order in the California cause. It was this order, based on this contention, that the Maryland Court acted upon.

At this trial petitioner testified on one occasion that she had married the respondent. Later in the case she testified that she had never entered into a valid marriage with the respondent. The Court finds this latter contention to be false.

9. During the earlier part of this trial, petitioner testified that she had never been married to John L. Manners, who she claimed was the father of Joan Langan. Later (interrupting the argument of counsel for respondent after the formal conclusion of the taking of testimony) the said petitioner arose in her seat and stated that she had been married to the said John L. Manners. The Court finds that the petitioner's statements both under
25 oath and otherwise are false.

10. The Court further finds that no evidence was presented by the petitioner that there is any such person as John L. Manners.

11. The Court finds that the petitioner is irresponsible as to her statements and that her mental processes are insecure.

12. The Court finds that the female minor child, Joan Langan, prefers to be in her father's custody and care and loves and cherishes her stepmother.

The Court further finds that the said minor child is very intelligent and fully capable of expressing her preferences and not only prefers to be in her father's custody, but does not desire to be with her mother.

13. The Court further finds that the mother is not a proper person to have the custody of the said minor child.

14. The Court further finds that the respondent has moved from the State of Maryland and that at the time of the filing of the petition and at the time of the trial was domiciled in the District of Columbia and intends to remain here.

Conclusions of Law

The Court necessarily concludes therefore as a matter of law:

1. That Joan Langan is the child of the petitioner and respondent.

2. That a valid and binding marriage existed between petitioner and respondent.

3. That said marriage was terminated by divorce obtained by respondent from petitioner.

4. That the best interests of the child require the placing of said child in the custody of the father, respondent herein.

5. The said respondent is a proper and suitable person to have the custody of the child.

6. That the full faith and credit clause of the Constitution rests more lightly upon custodial cases than upon other matters.

7. That petitioner is not a proper person to whom to award custody of said child.

T. ALLAN GOLDSBOROUGH,
Justice.

CHARLES WALKER,
Attorney for Respondent.

Seen:

W. R. LICHTENBERG,
Attorney for Petitioner.

137 OPINION OF JUDGE WOODWARD

(As read by witness Hahn)

I want to say in the beginning that there are a great number of objections to the testimony written in the depositions which we did not rule on as they were read to the Court, but the Court has considered all the testimony which it thinks is admissible, and after we have rendered a decision in the case if either side wants to take an appeal and after each side has gone over these depositions and has agreed on a great number of the questions and answers which I know you can agree on should come out of the case, and then objections are left in the case, the Court will file a memorandum ruling on those objections if you want to take an appeal, but the Court does not feel like it ought to hold up a decision in this case until we can rule on the multitude of objections in the depositions.

These cases, or this type of case, are always not only distressing to the parties, but are difficult cases for the Court. Here it is the custody of a child which is involved, and you have a father and mother who have engaged in long and protracted litigation over the child, who are bitter toward each other and doing all that each can to obtain the custody of the child.

This member of the Court is particularly impressed with the attitude of the child towards the mother. Now, here is a child that refuses to accept a dress from its mother and refuses to accept money from its mother, and it
 138 had been away from the mother for years—about two years, something like that; and before that these pictures indicated that the child loved its mother; and the only possible conclusion that I could come to is that since the father has had this child, that either the father or the stepmother, or the spiritual advisor or some one in the church, or some one has placed this hate in this child's heart toward the mother.

It is just not a natural or normal thing for a child 11 years of age to go on the stand and say what it did about its mother without some outside influence having been brought to bear on that child's mind.

Now, who did it the record does not show, but somebody did it, and the only reason in my opinion that this child has the attitude toward the mother that it does it because it has been away from the mother for these months, has been in the home of its father, and this attitude has been developed in this child's mind by some one who was in contact with it. It is the most abnormal thing that I ever saw developed in a child, unless outside influences brought it about.

And why did the father have this child? The court in California had given, after a full hearing, the child to the mother, and apparently the father had consented to that; and then, notwithstanding the order of the California court, that provided that the father should not take the child out of the jurisdiction of the court, in violation
 139 of that order he takes the child away—no, he picks that child up and brings it to Maryland, and he comes into this court now, confessing to this court that he did violate the order of that court, because that court had jurisdiction over the father and the mother and the child, and it specifically ordered him not to take the child out of the jurisdiction of that court, and still he brings it here to Maryland and then he comes in and wants us, because of the influence that is brought to bear on the child in his home, because the child now expresses a preference for the father, he wants us to say, "Yes, you have violated the order of the California court, and you have weaned this child away from the mother, and since you have done that now we will ratify what you have done and give you the child."

Article IV of the Constitution provides that full faith and credit shall be given in each state to the public acts,

records and judicial proceedings of every other state, and I am not unmindful of the fact that Article 42 of Section 21 of the Code says that in the disposition of habeas corpus proceedings the court shall be mindful of parental consideration, as to what is best for the child.

We think that this child can be just as happy with the mother as it is with the father, and that there is no reason why the child should not be as happy with the mother as it is with the father, and the only reason it would not
 140 be happy with her to start with is because of the influence he has brought to bear on the child since he has wrongfully had it.

I want to read into the record the principle of law as set forth in the Restatement of the Conflict of Laws. Paragraph 147 reads:

“Except as stated in paragraph 148, where the custody of the child has been awarded by the proper court to either parent, the decree will be enforced in other states.”

And in Section 148 it reads:

“And any state into which the child comes, upon proof that the custodian of the child is unfit to have control of the child, the child may be taken from him and given while in the state to another person.”

Now, the evidence in this case does not disclose that the mother is an unfit person to have this child, and the court in California found that she was a fit person to have it. Any change in circumstances that have been developed here today in the evidence indicates that possibly both of them are in better circumstances now than they were when the order of August, 1941, was passed, and we have been unable to find anything in this case, any evidence today to indicate that this mother is unfit to have this child.

It is thereupon, on this 24th day of February, 1944, by the Circuit Court for Montgomery County, ordered

141 that the custody of Joan Langan be and it is hereby remanded to Lorna Langan, to the mother.

The custody of the child will be delivered now.

PETITIONER'S EXHIBIT NO. 5

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF
LOS ANGELES

DEPARTMENT 41

BENJAMIN J. SCHEINMAN, Judge

LORNA LANGAN,
Plaintiff and
Cross-defendant

vs.

JOHN LANGAN,
Defendant and
Cross-complainant

No. D171012

MODIFICATION OF THE JUDGMENT
HERETOFORE ENTERED IN THE
ABOVE ENTITLED CASE

This matter having been brought before the court on Friday, August 22, 1941, at 2 p. m., the plaintiff and cross-defendant being present and represented by O. T. Gilbank, attorney-at-law, and the defendant and cross-complainant being present and represented by A. Brigham Rose, attorney-at-law, the following proceedings were had:

Both counsel waived notice of the hearing and consented that the court might then and there proceed in the matter of the modification of the judgment.

The record in this case shows that the interlocutory judgment of divorce was signed and filed on June 22, 1939, and entered June 23, 1939. Therein it was stated:

"For the best interests of said child in respect to its temporal, moral and mental welfare, IT IS ORDERED, ADJUDGED AND DECREED:

"That to facilitate and make effective the orders herein made, Karl Holton, Assistant Chief Probation Officer of Los Angeles County is hereby appointed to carry out these orders and act as the officer of the court in seeking out and finding a satisfactory home for the minor child of the parties, which home shall be a substitute neutral home; that the rules and regulations of the home in which the child is to be placed are to be complied with in respect to visitations, and the visitations to be limited or denied in accordance with the violation of those rules by either party; that the said child is not to be taken away from said home so that it will not be there for its supper, or its usual rest as is required of a growing child; that the routine of the neutral home is not to be disturbed; that the said child is not to remain over night with either of the parents until the further order of this court; that the said child is not to be removed from the County of Los Angeles or the State of California without the consent of the court first had and obtained; that the said Karl Holton is to carry out these orders and as heretofore designated is to act as the Officer of the Court in the carrying out and supervising these orders, and he is to administer to the needs of the said minor child in this connection; that the defendant and cross-complainant pay through K. J. Scudder, Court Trustee, for the support and maintenance of said minor child the sum of \$20.00 per week, including the cost of maintaining such child in a neutral home, clothes, medical attention and such other and necessary expenses as from time to time may occur; that all matters pertaining to the welfare of the said minor child be discussed by the said Karl Holton with the parents and/or their counsel as the situations arise."

The final decree, incorporating the provisions of the interlocutory decree, was signed December 27, 1940, and entered the same day.

The above portion of the judgment in this case is now vacated and set aside, and pursuant to stipulation of both counsel, and agreement of both parties, the order of this court in regard to minor child of the parties is as follows:

The custody of the minor child of the parties is awarded the plaintiff and cross-defendant, Lorna Langan, hereinafter called Mrs. Langan. The defendant and cross-complainant, John Langan, hereinafter called Mr. Langan, will have the right of reasonable visitation at the place of residence of Mrs. Langan. Mr. Langan will have the right to have said minor child two week-ends per month, from Saturday at 10 a. m. until Sunday at 6 p. m., beginning the first week-end in September, 1941. Mr. Langan shall inform Mrs. Langan of the address where he shall keep the said child during the said week-end periods, and Mr. Langan, when he has said child with him during such week-end periods, will keep, place and maintain said child under such conditions as would be fair and proper and consistent with the needs of the child, and a normal and satisfactory relationship with her father. Mrs. Langan will advise Mr. Langan of the residence of the said minor child and all changes of residence hereafter.

It is the order of this court that Mr. Langan pay for the support of the said minor child, through the Court Trustee, twenty-five per cent of any salary earned, in addition to twenty-five per cent of any additional income, but in no case shall the amount to be paid for the support of the said minor child be less than twenty-five dollars (25.00) per month; half to be paid on the first and half to be paid on the fifteenth of each and every month, beginning September 15, 1941.

It is the order of this court that Mr. Langan shall say nothing derogatory about Mrs. Langan to the said minor child; and, on the contrary, is to do everything in his power to instill and maintain in said minor child a feeling of love and respect for her mother. It is the order of this court that Mrs. Langan shall say nothing derogatory about Mr. Langan to the child; and, on the contrary is to do everything in her power to instill and maintain in said minor child a feeling of love and respect for her father.

Mrs. Langan, having stipulated that the matter of the paternity of the said minor child has heretofore been adjudicated in this action, it is the order of this court that Mrs. Langan shall not say anything to said minor child which might tend to deny the paternity of Mr. Langan, or which might cause doubts in the mind of said minor child as to the paternity of Mr. Langan.

It is the order of this court that Mr. Langan shall be consulted by Mrs. Langan on all matters concerning the health and medical care of said minor child.

It is the order of this court that Mr. Langan shall do nothing which will tend to substitute another person as the recipient of the love and affection which the said minor child would ordinarily reserve for her mother; and it is the order of this court that Mrs. Langan shall do nothing which will tend to substitute another person as the recipient of the love and affection which the said minor child would ordinarily reserve for her father.

It is the order of this court that Mrs. Langan shall not place nor offer to place the said minor child for employment in the motion picture industry or any theatrical enterprise.

It is the order of this court that Mrs. Langan say nothing to any person concerning any alleged misconduct of Mr. Langan in connection with the said minor child.

It is the order of this court that said minor child is not to be taken out of Southern California except upon consent of this court.

It is the order of this court that all of the orders herein made shall be subject to modification at any time that there should be a change of conditions or a violation of any order herein made.

Done in open court this 22nd day of August, 1941.

BENJAMIN J. SCHEINMAN,
Judge.

Approved as to form and content:

O. T. GILBANK,
Attorney for plaintiff and
cross-defendant
A. BRIGHAM ROSE,
Attorney for defendant and
cross-complainant

STATE OF CALIFORNIA } ss. D 171012
County of Los Angeles }

I, J. F. MARONEY, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original MODIFICATION OF THE JUDGMENT HERETOFORE ENTERED IN THE ABOVE ENTITLED CASE, Omitting Sheriff's Return—(4) (Filed SEP 5 1941) IN THE ACTION OF:

LORNA LANGAN VS JOHN LANGAN
on file or of record in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and

annexed the seal of the Superior Court of the State of California, in and for the County of Los Angeles, this 16th day of February, 1944.

[SEAL]

J. F. MORONEY

County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

County of Los Angeles }
STATE OF CALIFORNIA } ss.

I, MYRON WESTOVER Presiding Judge of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that J. F. MORONEY is County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles (which Court is a court of record, having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said J. F. MORONEY as such officer; that the seal annexed thereto is the seal of said Superior Court; that said J. F. MORONEY as such Clerk is the legal custodian of the original records or documents described and referred to in the foregoing certificate, is the proper officer to execute the said certificate and attestation, and such attestation is in due form according to the laws of the State of California.

IN WITNESS WHEREOF, I have hereunto set my hand in my official character as such Presiding Judge, at the City of Los Angeles, County and State aforesaid, this 16th day of February, 1944.

MYRON WESTOVER

Presiding Judge of the Superior Court of the State of California, in and for the County of Los Angeles.

STATE OF CALIFORNIA }
 County of Los Angeles } ss.

I, J. F. MORONEY, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles (which Court is a court of record, having a seal which is annexed hereto), do hereby certify that MYRON WESTOVER whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Presiding Judge of the Superior Court aforesaid and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In Witness Whereof, I have hereunto set my hand and annexed the seal of the Superior Court, at my office in said County, this 16th day of February, 1944.

[SEAL]

J. F. MORONEY

County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

RESPONDENT'S EXHIBIT NO. 7

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

LORNA LANGAN, *Plaintiff*,

vs.

JOHN LANGAN, *Defendant*

No. D 171012

COMPLAINT

SEPARATE MAINTENANCE—CUSTODY

Plaintiff complains of defendant and for cause of action alleges:

I

That the plaintiff and defendant intermarried on the 16th day of October, 1931, in the City of Los Angeles, County of Los Angeles, State of California, and again intermarried on the 23rd day of July, 1938, in the City of Los Angeles, County of Los Angeles, State of California; that ever since said date of October 16, 1931, the plaintiff and the defendant have been and now are husband and wife;

* * *

III

For statistical purposes plaintiff alleges:

(a) That the date of marriage of plaintiff and defendant was the 16th day of October, 1931; that a re-marriage took place on the 23rd day of July, 1938;

(b) That the date of final separation of plaintiff and defendant was on the 4th day of August, 1938;

(c) That the time elapsed between the date of the first marriage and the date of final separation is six years, eight months, and eighteen days; that the time elapsed between the date of the second marriage and the date of separation is twelve days;

(d) That there is issue of said marriage, to-wit, a girl named Joan, aged five (5) years;

* * *

STATE OF CALIFORNIA }
County of Los Angeles } ss.

LORNA LANGAN being by me first duly sworn, deposes and says: that she is the Plaintiff in the above entitled action; that she has read the foregoing Complaint and

knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it to be true.

LORNA LANGAN

Subscribed and sworn to before me this 8th day of August, 1938

ELIZABETH G. STOREY

Notary Public in and for the County of Los Angeles, State of California.

[Seal]

PETITIONER'S EXHIBIT No. 8

OSCAR B. HUNTER, M. D.

Pathologist

Columbia Medical Building

1835 Eye Street, N. W.

Washington 6, D. C.

Received: March 4, 1944

March 6, 1944

REPORT OF BLOOD GROUPING TESTS

Joan Frances Langan

Lab. No. 130314

	Moss method	Jansky method	International designation	M and N factors	Rh factor
Joan Frances Langan (child)	Type IV	Type I	Type O	M	Rh positive
Lorna Langan (mother)	Type IV	Type I	Type O	MN	Rh positive
John Francis Langan (alleged father)	Type II	Type II	Type A	MN	Rh positive

RESULTS: The child's grouping is within the possibility of that resulting from the union of the above alleged parents, and the child is apparently their offspring.

CONVERSELY: The child is not of the alleged father, when:

The child's blood is	The mother's blood is	The alleged father's blood is
O	O, A, B	AB
AB	AB	O
AB	A	A, O
AB	B	B, O
A	B	O
A	O	B, O
B	A	O
B	O	A, O

The child's grouping as indicated above is within the possibility of that resulting from the union of the alleged parents and the M and N factors do agree. The M and N agglutinogens are inherited as Mendelian dominants and their heredity depends upon a single pair of allelomorphic genes, M and N. Accordingly only three genotypes are possible, MM, MN and NN corresponding to the three phenotypes M, MN and N respectively.

TABLE OF AGGLUTINOGENS M AND N

Percent children of types

Types of parents	MN	M	N
MN x MN	50	25	25
MN x MN	50	0	50
MN x M	50	50	0
M x N	100	0	0
M x M	0	100	0
N x N	0	0	100

DIAGNOSTIC IMPRESSION: This child is the result of the union of the above alleged parents or parents possessing similar agglutinogens as indicated. The alleged father is not excluded.

Reported:

OSCAR B. HUNTER

Pathologist

We expect to show your Honor that the mother
 61 of the child, who is the moving party in this action,
 was awarded custody of the child in the latest decree
 of February 24, 1944, and that prior to that time she was
 the custodian of the child by an order of another court of
 competent jurisdiction.

The Court:

Is it your view that the full faith and credit clause
 applies to actions of this kind?

Mr. Lichtenberg: No. Under certain circumstances I
 say it would not. The decrees of other jurisdictions must
 be given full faith and credit, but the welfare of the child
 is paramount in this court, under the Boone and Cook
 cases, and your Honor has a right to consider the welfare
 of the child and the situation from the time—

The Court: In other words, you agree with me that the
 full faith and credit clause of the Constitution has nothing
 to do with this case?

Mr. Lichtenberg: Except to this extent, that if circum-
 stances have changed from the time of the last order, then
 the full faith and credit provision should not consider the
 matter foreclosed as a case on the theory of res adjudicata.

I say that the decision of the Maryland Court, as
 62 well as of the California court, as of the time that
 they were given, this Court should give full faith
 and credit to, but that does not preclude this Court from
 going into matters subsequent to that time, and determin-
 ing whether or not—

The Court: I just want to understand your view of
 whether or not the full faith and credit clause of the Con-
 stitution of the United States applies to a proceeding of
 this kind.

Mr. Lichtenberg: All I say is this, and I am stating what
 the Court of Appeals has said—

The Court: If you don't want to answer, you don't have to, but I want your view about it. In the Court's opinion, it has no relation at all to a proceeding of this kind. The Court thinks that he should treat with respect the views of the California Court and of the Maryland Court, but the Court thinks that the only thing the Court is bound by is what he thinks should be done in this case, for the welfare of the child.

* * *

64 MRS. LORNA LANGAN,
(Direct Examination)

* * *

81 Q. Now, what is your present occupation? A.
I own a school in California.

82 Q. How many students do you have at that school?
A. Approximately between 40 and 50.

Q. What are the average ages of these students? A.
From about 4 to 12 years.

Q. Do you board the children there? A. I board some
of them.

Q. Do all of your students board at the school? A. No,
about 20 of them do.

Q. And you have supervision of those children? A. That
is correct.

Q. Can you tell us what your net earnings or average
net earnings may be from this enterprise? A. Approx-
imately \$500 a month.

Q. With that \$500, are you able to maintain a proper
home and support Joan yourself? A. Yes, sir.

Q. Where do you contemplate keeping Joan if custody
is re-established in you? A. She would have her own room
at the school.

Q. Has there been any change in your financial circum-
stances or any of the circumstances that you know of since
1 o'clock of February 25, 1944? A. None that I know of
at all.

* * *

84 Q. Mrs. Langan, if the Court gives you the opportunity, do you think or do you not that you can regain the love and affection of your daughter? A. I know it.

Q. Will you tell us why you know that? A. Because exactly the same thing has happened before.

* * *

100 Q. This is your child? A. It certainly is.

Q. And Mr. Langan is the father?

Mr. Lichtenberg: I object.

The Court: Objection overruled, of course. You will have to answer the question. A. No, it is not his child.

The Court: How is that?

The Witness: It is not his child.

* * *

104 By Mr. Lichtenberg:

Q. Mrs. Langan, who is the father of the child?

A. John Lawrence Manners.

By the Court:

Q. Who is John Lawrence Manners? A. Who is he? He is Joan's father.

* * *

105 Q. You know as a fact that John Langan is not the father of Joan? A. Yes, I do. I know that he could not be.

* * *

132 By Mr. Walker:

Q. Did you ever marry John Lawrence Manners?

Mr. Green: We object.

The Court: Objection overruled.

A. I am sorry; I cannot answer it.

Mr. Lichtenberg: The Court has overruled the objection, and the Court wants to know whether or not you went through the marriage ceremony? A. For six years I have gone through every kind of misery to avoid answering that question, and I cannot.

By Mr. Lichtenberg:

Q. Why? A. Because I am not going to prove myself to be my own child's worst enemy.

Mr. Green: We object, and ask your Honor to reconsider that ruling.

The Court: I have no right to reconsider that ruling. That is vital to this case, absolutely vital to it.

* * *

133 Mr. Walker (to the reporter): Read the question, please.

(The pending question was repeated, as follows: "Did you ever marry John Lawrence Manners?") A. Am I to understand that it is the express understanding that Mr. Langan's attorneys cannot give this to the newspapers?

The Court: I have not any jurisdiction over that.

Mr. Lichtenberg: We will ask your Honor, for the benefit of the child, that all of us be asked not to. It will certainly not do the child any good.

Mr. Walker: She is the one that raised the question of paternity with the newspapers.

Mr. Lichtenberg: (to Mr. Walker): Did you ever read the "News"?

The Court: Counsel for the defendants say that they will not discuss it.

Mr. Walker: I submit that I am entitled to an answer, regardless.

The Witneess: You are not thinking of the child.

The Court: The Court has ruled that you are entitled to that answer.

By Mr. Walker:

Q. Answer the question. A. No.

* * *

Cross Examination

243 Q. Didn't you say in that that as a result of the marriage between you and Mr. Langan, a child, Joan Langan, was born? A. I did not say so. When I found out that it was in my complaint, I dismissed my attorneys.

Q. Did you change your complaint? A. No, I did not, on the advice of my attorneys.

Q. Let us refresh your memory a little. At the trial in Los Angeles, which took about eight days, did you tell the judge at that time that John Manners was the father of that child? A. I did not. Mr. Walker, may I make it quite plain to you that all during my life I have attempted to keep the paternity question out of the public courts and the newspapers. Mr. Langan has presumed upon that, and upon the fact that I stayed over in this country.

* * *

952 JOAN LANGAN

took the stand, and, after having been duly questioned as to her knowledge of the truth, was examined, and testified as follows:

953 Mr. Walker: This is the Judge, Joanie (indicating). (All parties present in chambers were introduced to the witness.)

Mr. Walker: Make yourself comfortable, Joanie. Do you like your new school?

The Witness: Yes.

The Court: Do you want this young lady sworn, gentlemen?

Mr. Green: I don't think so.

Mr. Walker: I think she should be.

The Court: All right. Bring in the Bible.

(The witness was thereupon duly sworn.)

DIRECT EXAMINATION

By Mr. Walker:

Q. Now, Joanie, do you know the difference between telling the truth and not telling the truth? A. Yes.

Q. And where did you learn that, Joanie? A. From my step-mother.

Q. Where did you learn it before your step-mother told you? A. My father.

Q. Your father? A. Yes.

Q. And where did anyone else teach you that? A.
954 The sisters at the Convent.

Q. The Sisters at the Convent? A. Yes.

Q. What Convent was that? A. Sacred Heart and St. Vincent's.

Q. What did they tell you about telling the truth and telling an untruth? A. Well, they told me that when you told the untruth it wasn't right.

Q. Did they tell you anything else? A. I don't remember.

Q. Did your mother, Lorna Langan, ever speak to you about people who tell the truth and people who don't tell the truth? A. She said that to get some place you have to lie.

By the Court:

Q. She said what? A. She said to get some place you have to lie.

By Mr. Walker:

Q. She said that to get some place you have to lie. Where did she tell you that, Joanie? A. She told me that

when we were at a boarding house. I forget what street it is on.

* * *

1008 ALBERT R. ARCHIBALD

was produced as a witness on behalf of the petitioner, and, after having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. Lichtenberg:

Q. Give the Court your full name, please, sir. A. Albert R. Archibald.

Q. What is your official position with the United States Government? A. Well, I am Chairman of the Interdepartmental Visa Review Committee.

Q. That is in the Department of Labor? A. Department of Justice.

* * *

1024 By Mr. Lichtenberg:

Q. Do you have a picture of John Manners? A. I do.

Q. May I see it, please?

(The picture was handed to Mr. Lichtenberg.)

Is this (indicating) the picture of John Manners? A. Yes.

Mr. Lichtenberg (addressing Mr. Walker): Do you want to see it?

(The picture was handed to Mr. Walker.)

Mr. Walker: If your Honor please, do you want to see it? We will go to the bench.

(The following proceedings were had at the bench, out of the hearing of the parties:)

Mr. Walker: I want your Honor to look at the picture and notice the initial before the name.

Mr. Lichtenberg: I have explained that to the
1025 Court in your presence.

The Court: Look where?

Mr. Walker: This, here (indicating). Certainly, everybody knows who this man is.

The Court: I don't.

Mr. Walker: I do.

Mr. Green: That is the father of the child.

Mr. Walker: I think he is about ten years younger than the petitioner.

Mr. Green: He is 40 years of age.

The Court: She has testified that that is the picture of the father of this child. In that event, do you object to its being introduced in evidence?

Mr. Walker: Let the Court take it for what it is worth. I am objecting, unless there is a connection.

The Court: The Court will have to overrule the objection.

Mr. Walker: That is all right, sir.

(The following proceedings were had in the presence and hearing of the parties:)

Mr. Lichtenberg: We offer this picture, if your Honor please, as Petitioner's Exhibit 13.

The Court: It will be kept carefully by the Clerk.

(The photograph of John Manners was received in evidence and marked Petitioner's Exhibit Number 13.)

* * *

1031 Q. Now, Mr. Archibald, will you look in the file
and see whether or not there was an interview with
Mrs. Langan back in 1938, when these proceedings
1032 were instituted, to see whether or not she made any
statement as to who was the father of Joan Langan?
A. 1938?

Q. Yes, or 1939—when these proceedings were instituted, when she was interviewed and couldn't give the correct name. A. She was interviewed August 8, 1938.

Q. Will you tell us whether or not she was asked whether she was married, and whether or not any children were born, and who was the father of the children? A. She said she was married.

Q. Did she tell you to whom she was married?

By the Court:

Q. What was the date of the interview? A. August 8, 1938.

The Court: Yes, sir. Proceed, sir.

By Mr. Walker:

Q. Did she tell you to whom she was married? A. Well, I will have to look through this.

Q. Yes, sir. Exactly. A. She said she was married in a church in Glendale, California.

Q. To whom? A. John Langan.

Q. Did she tell you whether there were any children? A. One.

1033 Q. Did she tell you who the father was? A. No. There is not that precise question.

Q. What is the question and what is the answer? A. Sir?

Q. What is the question asked? A. "To whom married? John Langan. "Do you have any children? One. Name of the child? Joan Frances Langan."

Mr. Walker: I have no other questions.

Mr. Lichtenberg: You may step down, please.

Mr. Walker: Thank you for bringing him in.

* * *

MRS. LORNA LANGAN,

the petitioner herein, resumed the stand, and having been

previously duly sworn, was further examined, and testified as follows:

EXAMINATION

By the Court:

Q. Now, Mrs. Langan, you testified several days ago that the photograph of John Manners, whose name was John L. Manners, was in California, and that no one could get it but you. Where did this alleged photograph
1034 come from? A. Well, there were a number of pictures, sent to me, your Honor, from California—two envelopes full of them.

Q. When? A. A couple of days ago. I called long distance about—almost two weeks ago.

Q. Was this the photograph that you had in mind? A. Yes. I don't know his real name. In fact, I am sure that it is not John Manners. That was the name he was writing under.

Q. You were questioned by Mr. Walker about a man by the name of John G. Manners, and you said that the John Manners you referred to was John L. Manners—is that right? A. I believe so.

Q. All right. Now, this picture—the name underneath is "J. Manners," but the first—that is evidently the second name. The first name has been torn out of the picture. What is the explanation for that? A. I don't know, your Honor. I have no explanation.

* * *

68

LORNA LANGAN (Further Examination)

Mr. Lichtenberg:

Q. What time did the Court render its decision in Rockville? A. I believe about 1 a. m. on the morning of the 25th.

Q. So that the child was immediately turned over to you? A. Yes.

Q. Then did you proceed to Washington with your daughter? A. I did.

Q. Did you take her to your hotel? A. Yes.

Q. Did you both go to sleep at the hotel? A. Yes.

Q. What time in the morning did you arise? A. We went to bed around 2 o'clock, and arose about 9.

Q. What time did you see Mr. Langan? A. A little after 10 o'clock.

Q. Where did you see him? A. In the lobby of
69 the hotel.

Q. Was it there that he took the child. A. Well, I was not present, so I do not know exactly.

Q. Where did you leave the child? A. In the dining room.

Q. Tell us just what did happen. A. I came out of the elevator, and Mr. Langan came up toward me with reporters and photographers, and he said, "I want to talk to you," and he said, "I am not going to take Joan; don't make a fuss."

I said, "John, I am not sure that you should be here."

I said, "We have not had breakfast yet."

I was frightened, and was stalling for time.

He said, "Come along," and he put his arm around Joan, and led the way into the dining room, and I followed and went over toward a booth. Then he pushed me aside and said, "This is not Maryland; this is the District; I will do as I please."